

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

FILED BY [Signature] D.C.
05 JUL 21 AM 8:11
THOMAS M. GOULD
CLERK U.S. DISTRICT COURT
W.D. OF TN, JACKSON

KAREN DARNELL,)	
)	
Plaintiff,)	
)	
v.)	No. 04-1189-T-An
)	
COMMISSIONER OF)	
SOCIAL SECURITY,)	
)	
Defendant.)	

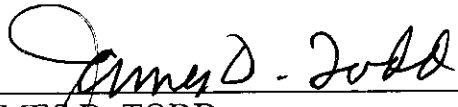
ORDER GRANTING PLAINTIFF'S MOTION FOR ATTORNEY FEES
UNDER THE EAJA AND DENYING THE MOTION FOR ATTORNEY FEES
UNDER THE SOCIAL SECURITY ACT WITHOUT PREJUDICE


Plaintiff filed this action to obtain judicial review of Defendant Commissioner's final decision denying her application for benefits under the Social Security Act. On February 17, 2005, the court entered an order reversing the decision of the Commissioner and remanding the action for further development of the record pursuant to sentence four of 42 U.S.C. 406(b). Plaintiff has now filed a petition for an award of attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2414(d) ("EAJA"), and § 405(g) of the Social Security Act. The Commissioner has responded to the motion and concedes that Plaintiff's

request for attorney fees under the EAJA in the amount of \$2,888.75 should be awarded. Consequently, this portion of the motion is GRANTED.¹

Plaintiff also seeks attorney fees under the Social Security Act. An attorney who successfully represents a Social Security benefits claimant in court may be awarded as part of the judgment “a reasonable fee ... not in excess of 25 percent of the ... past-due benefits” awarded to the claimant. 42 U.S.C. § 406(b)(1)(A). Plaintiff’s request is premature in that she has not yet been determined to be entitled to past due benefits. Accordingly, this portion is DENIED without prejudice. Plaintiff may re-file her motion for § 406(b) fees if she is awarded past-due benefits.

IT IS SO ORDERED.



JAMES D. TODD
UNITED STATES DISTRICT JUDGE


DATE

¹ The EAJA requires a district court to “award to a prevailing party ... fees and other expenses ... incurred by that party in any civil action ..., including proceedings for judicial review of agency action, brought by or against the United States ..., unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). A party who wins a sentence-four remand order is a prevailing party for purposes of the EAJA. Shalala v. Schaefer, 509 U.S. 292, 300-02 (1993).



Notice of Distribution

This notice confirms a copy of the document docketed as number 22 in case 1:04-CV-01189 was distributed by fax, mail, or direct printing on July 22, 2005 to the parties listed.

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Honorable James Todd
US DISTRICT COURT